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COUNTY OF SANTA BARBARA and  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUNAN CHEN, KELLY YAO  
WANG, CHANGSHUANG WANG,  
JINSHUANG LIU, LICHU CHEN,  
and WENQUEI HONG,

## Plaintiffs,

V.

COUNTY OF SANTA BARBARA;  
SANTA BARBARA COUNTY  
SHERIFF'S DEPARTMENT; CAPRI  
APARTMENTS AT ISLA VISTA;  
ASSET CAMPUS HOUSING; and  
DOES 1 through 200, Inclusive

## Defendants.

Case No: CV 15-1509-JFW (JEMx)

**DEFENDANTS COUNTY OF  
SANTA BARBARA AND SANTA  
BARBARA COUNTY SHERIFF'S  
DEPARTMENT'S MOTION TO  
DISMISS COMPLAINT (FRCP  
12(b)(6))**

[Filed concurrently with Proposed Order]

Judge: Hon. John F. Walter  
Courtroom: 16 – Spring Street  
Date of Hearing: June 8, 2015

TO THE PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on June 8, 2015, at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 16 of the above entitled court, located at 312 N. Spring St., Los Angeles, CA., defendants County of Santa Barbara and Santa Barbara County Sheriff's Department will move this court to dismiss each cause of action from plaintiffs' Complaint pursuant to [Rule 12\(b\)\(6\)](#) on the following grounds:

1. Plaintiffs' Complaint does not state a claim on which relief can be granted  
2 for denial of due process.

3 This motion is made following the conference of counsel pursuant to  
4 Central District Local Rule 7-3, which took place on March 16, 2015.

5 This motion will be based upon this Notice, the within memorandum of  
6 points and authorities, the pleadings on file herein, and such other matters as  
7 may be presented at the hearing of this motion.

8 Dated: May 3, 2015

9 MICHAEL C. GHIZZONI  
COUNTY COUNSEL

10 By: /s/  
11 Lisa A. Rothstein  
12 Senior Deputy County Counsel  
13 Attorneys for Defendants  
14 COUNTY OF SANTA BARBARA and  
SANTA BARBARA COUNTY SHERIFF'S  
DEPARTMENT

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## **MEMORANDUM OF POINTS & AUTHORITIES**

# I. INTRODUCTION

This tragic event has been heavily reported in the news. Elliot Rodger was a dysfunctional, lonely young man who took revenge for his unhappiness through a deadly rampage in Isla Vista, California, where he killed three people, and injured another fourteen. The tragedy is undeniable. The liability, however, is not with these defendants.

Plaintiffs Junan Chen, Kelly Yao Wang, Changshuang Wang, Jinshuang Liu, Lichu Chen, and Wenquei Hong are the parents of three victims of Rodger's killing spree. They sue the Santa Barbara Sheriff's Department asserting that when several Deputies made a wellness call on Rodger several weeks before the incident, they should have realized the risk he posed and done something to change the course of what occurred.<sup>1</sup> As discussed below, case law limits Fourteenth Amendment liability in this type of case, where the plaintiffs were harmed by a third party and not by the government. "The state's failure to protect an individual against private violence does not generally violate the guarantee of due process." *Kennedy v. City of Ridgefield* 439 F.3d 1055, 1061 (9th Cir. 2006).

Plaintiffs attempt to plead into an exception to the general rule of non-liability. Under the “state-created danger” doctrine, the government can be liable for harm caused by third parties if state action affirmatively placed the plaintiff in a position of danger; that is, where state action creates or exposes an individual to a danger which he or she would not have otherwise faced. Plaintiffs assert that by failing to recognize Rodger’s threat when they were

<sup>1</sup> Plaintiffs also sue Capri Apartments at Isla Vista and Asset Campus Housing, alleging negligence in placing the decedents as Rodger's roommates.

dispatched to check on his welfare, the defendants somehow exacerbated the threat that he posed. As set forth below, these bare allegations are insufficient to support a Fourteenth Amendment Claim.

## II. FACTUAL SUMMARY

The Complaint contains a summary of Rodger's life in the couple of years preceding his rampage. As it relates to the allegations against the Santa Barbara County Sheriff's Department, plaintiffs allege that Rodger moved to the Capri apartments in Isla Vista in June 2011 to attend City College. (Complaint, p. 5:10-15.) Capri management paired Rodger with multiple roommates, most of whom Rodger had problems with, because of his racist attitude, feelings of inferiority, or other psychological problems. (Complaint, p.5:16-28.)

Rodger became more miserable as time went on and his fortunes didn't change for the better. (Complaint, p. 6:6-12.) In late 2012, Rodgers parents arranged for him to begin seeing a psychiatrist. (Complaint, p. 6:23-24.) Around the same time, he began planning his "Day of Retribution," when he would massacre young people on the streets of Isla Vista to take revenge for the fact that they were happy and he was not. (Complaint, p. 7:1-6.) He wrote, "It would be a day in which I exact my ultimate retribution and revenge ... I will arm myself with deadly weapons and wage a war against all women and the men they are attracted to. And I will slaughter them like the animals they are." (Complaint, p. 7:1-6.)

In December 2012, Rodger purchased a semiautomatic pistol, signing all of the paperwork in his own name. (Complaint, p. 7:7-8.) His rage continued in 2013, when he posted racist and misogynistic comments on several different websites and recorded videos of himself ranting on YouTube. In Spring 2013, Rodger purchased another pistol and several boxes of ammunition. (Complaint, p. 7:25-26.)

1        In July 2013, Rodger threatened some girls at a party in Isla Vista, and  
2 some boys came to their defense. They pushed Rodger off a ledge, which broke  
3 his ankle. His father took him to the hospital the following day and Rodger was  
4 interviewed by Sheriff's Deputies. When other party-goers told the Deputies that  
5 Rodger had been the aggressor, they did no further follow up or investigation.  
6 (Complaint, p. 8:1-17.) After recuperating at his mother's house for several  
7 weeks, he returned to Isla Vista in September, 2013. (Complaint, p. 8:18-20.)  
8 Capri management paired him with new roommates, Cheun-Yuan Hong and  
9 Weilan Wang, two of plaintiffs' decedents in this case. (Complaint, p. 8:20-22.)

10       In January 2014, Rodger became irritated at Hong and Wang because he  
11 did not like the smell of their cooking. He began taking their cookware and  
12 refused to return the items when his roommates confronted him. In response,  
13 Hong took some candles and candleholders from Rodger. Rodger placed Hong  
14 under citizens' arrest and called Sheriff's Department. Hong was arrested for  
15 petty theft but not ultimately charged. (Complaint, p. 9:7-20.)

16       In early 2014, Rodger began making specific plans to carry out his "Day  
17 of Retribution." He settled on May 23, 2014. (Complaint, p. 9:21-23.) In April  
18 2014, Rodger uploaded more videos to YouTube, which revealed him to be  
19 unstable and dangerous. (Complaint, p. 9:24-28.)

20       On April 30, 2014, Sheriff's Deputies went to Rodger's apartment after  
21 getting a call from a mental health worker who saw Rodger's YouTube videos  
22 and believed he might be a danger to himself or others. Nobody from the  
23 Sheriff's Dept. watched the videos, performed a background check, or reviewed  
24 Rodger's online postings. When they went to Rodger's apartment, the Deputies  
25 did not request entry but only spoke with Rodger at the door. (Complaint, p.  
26 10:1-9.) Rodger convinced the Deputies that it was a misunderstanding, and  
27 they left the apartment without taking any action.

On May 23, 2014, Rodger killed Hong and Wang and their friend Junan Chen, who was visiting, at their apartment. He then emailed his “manifesto” to his parents, some friends, and his therapist before going out into Isla Vista, where he carried out a shooting rampage that left three more people dead and fourteen wounded.

On March 2, 2015, plaintiffs, the parents of decedents Hong, Wang and Chen, filed this civil rights lawsuit, alleging that the Sheriff's Department violated their Fourteenth Amendment right to due process when the Deputies failed to perform a background check or conduct a more thorough investigation on Rodger in the course of their welfare check at Rodger's apartment on April 30, 2014.

### III. STANDARD OF REVIEW

To state a claim for relief under section 1983, plaintiffs must plead facts that if true, would constitute the deprivation by the defendants of a right secured by the United States Constitution. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir.) (citation omitted), cert. denied, *522 U.S. 996* (1997). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007).

In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint and construe the pleading in the light most favorable to the plaintiff. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). However, the “court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citations omitted).

IV.

## THE ALLEGATIONS DO NOT SUPPORT A CLAIM THAT THE DEPUTIES ACTIONS PLACED PLAINTIFFS' DECEDEENTS IN DANGER

There is no dispute that the decedents died at the hands of Rodger, and not as a direct result of any action by the Sheriff's Department. Plaintiffs allege that nonetheless, the Sheriff's Department is liable here because it failed to reasonably investigate Rodger in conjunction with conducting a wellness check. (Complaint, p. 11:7-12:13.) Constitutional liability in this type of case, where the plaintiffs were harmed by a third party and not by the government, is narrowly restricted. “[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even when such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.” *DeShaney v. Winnebago County Dept. of Social Serv.*, 489 U.S. 189, 196 (1989). “The state’s failure to protect an individual against private violence does not generally violate the guarantee of due process.” *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006). Stated another way, “the Fourteenth Amendment typically does not impose a duty on the state to protect individuals from third parties.” *Patel v. Kent School Dist.*, 648 F.3d 965, 974 (9th Cir. 2011).

Here, plaintiffs allege facts intended to fit within an exception to the general rule of no government liability for harm caused by private parties. Under case law, the government *can* be liable under these circumstances if state action affirmatively placed the plaintiff in a position of danger; that is, “where state action creates or exposes an individual to a danger which he or she would not have otherwise faced.” *Kennedy, supra, 439 F.3d at 1061*. This state-created danger exception though, is narrowly construed. In order to state a claim under the state-created danger doctrine, plaintiff must establish that: (1) an affirmative action of the government placed the plaintiff in danger he would not otherwise

1 have faced; (2) the danger was known and obvious; and (3) the officer acted  
2 with deliberate indifference to the known danger. Kennedy, supra, 439 F.3d at  
3 1062-64.

4 Examples of circumstances in which Courts have found government  
5 liability for harm directly caused by third parties include Wood v. Ostrander,  
6 879 F.2d 583 (9th Cir. 1989) and Munger v. City of Glasgow, 227 F.3d 1082  
7 (9th Cir. 2000). In Wood, police officers arrested a drunk driver, took his keys,  
8 and left his female passenger on the side of the road in a high crime area, where  
9 she was subsequently raped. The Court held that the police had affirmatively  
10 created the danger that befell the plaintiff and could be liable. Id. at 589-590. In  
11 Munger, police responded to a bartender's call for help with a disturbance. The  
12 officers ejected the instigator from the bar in sub-freezing weather though he  
13 was dressed in only jeans and t-shirt. He died that night of hypothermia. Again,  
14 the Court held that these facts fit within the state-created danger doctrine  
15 because law enforcement affirmatively placed the decedent in a position of  
16 danger. Id. at 1087.

17 To state a claim then, plaintiffs must allege that the Sheriff's Deputies  
18 took an affirmative action that placed the victims in greater danger than they  
19 otherwise would have confronted, that the danger Rodger posed was known and  
20 obvious, and that they acted with deliberate indifference when they failed to  
21 further investigate. The Complaint does not adequately plead any of these three  
22 elements. Rather, the allegations only support a claim that the Deputies failed to  
23 stop Rodger from carrying out his already-planned "day of retribution."

24 A. Plaintiffs do not Allege an Affirmative Act that Caused Harm

25 To support the claim of an affirmative act, Plaintiffs allege, "[t]his failure  
26 on the part of the SBCSD [to request to enter the apartment or search Rodger's  
27 room] emboldened Rodger and caused him to adapt and expand his plans of

1 violence, creating greater danger than existed previously.” (Complaint, p. 10:9-  
2 11.) Plaintiffs support this contention by quoting from Rodger’s “Manifesto”  
3 where he states:

4 “[I]f they had demanded to search my room ... That would have  
5 ended everything.... When they left, the biggest wave of relief  
6 swept over me... This incident made me realize that I needed to be  
extra careful. I can’t let anyone become suspicious of me...”

7 Complaint, p. 10:12-16. This statement does not support a claim of an  
8 affirmative action that increased the decedents’ exposure to harm. It merely  
9 indicates Rodger’s determination to carry out his plans and not be discovered.  
10 Rodger does not express any intention to enlarge his plans, or widen his scope.  
11 Any allegation that the officers’ visit had that impact is entirely conclusory and  
12 not adequate to support a Fourteenth Amendment claim.

13 In addition, there is no contention in the Complaint (nor could there be)  
14 that the officers had probable cause to search Rodger’s apartment. Without  
15 probable cause, the most they could have done legally is request entry. There’s  
16 no indication that Rodger would have allowed the officers to enter the  
17 apartment. In fact, he writes that the Deputies would have thwarted his efforts if  
18 they had “demanded to search my room,” not if they had “requested” to search  
19 the room. Any allegation regarding whether Rodger would have consented to a  
20 search of his apartment would be speculative and conclusory at best. For this  
21 additional reason, the Complaint does not adequately support a contention that  
22 the officers’ actions placed the decedents at greater risk.

23 B. Plaintiffs do not Allege that at the Time of the Wellness Check, Rodger  
24 Posed a Known and Obvious Danger

25 Plaintiffs do not contend that Rodger posed a known and obvious danger  
26 at the time the Deputies visited him on April 31, 2014. The Complaint contains  
27 some detail about Rodger’s decline that includes an incident in which he broke  
28 his ankle after an altercation at a party and a time that he made a citizen’s arrest

1 of his roommate for taking his candles. These incidents might indicate that  
2 Rodger was hot-tempered, or vindictive, but there is nothing in the allegations  
3 that, if proven, would support a contention that Rodger posed a known and  
4 obvious danger. Rather, the Complaint suggests that while Rodger was  
5 increasingly disturbed internally, he did not present that way to the Deputies that  
6 came to his door on April 31.

7 C. There are Nothing But Conclusory Allegations that the Deputies Acted  
8 with Deliberate Indifference

9 “Deliberate indifference is a ‘stringent standard of fault, requiring proof  
10 that a municipal actor disregarded a known or obvious consequence of his  
11 action.’ *Patel v. Kent School Dist.*, *supra*, 648 F.3d at 974. “The state actor  
12 must ‘recognize an unreasonable risk and actually intend to expose the plaintiff  
13 to such risks without regard to the consequences to the plaintiff. *Ibid.* Again,  
14 plaintiffs’ allegations are conclusory: “defendants recklessly and with deliberate  
15 indifference created a dangerous condition by failing to reasonably investigate,  
16 reasonably perform any background check, and reasonably investigate the online  
17 postings of Rodger as part of conducting his ‘wellness check.’” (Complaint, p.  
18 11:8-12.) There are no facts in the Complaint that would suggest an actual  
19 intent by the Deputies to expose the plaintiffs’ decedents to risk. Rather, the  
20 Complaint suggests a failure by the Deputies to discover facts that might have  
21 given them cause for greater concern. This however, does not meet the standard  
22 for deliberate indifference.

23 Because the Complaint does not in any substantive way allege that the  
24 Deputies’ deliberate and intentional actions affirmatively placed the decedents  
25 are risk, it does not state a claim under the Due Process Clause.

26 ///

27 ///

28

## V. CONCLUSION

Plaintiffs' factual allegations support a claim that Rodger was disturbed and homicidal but they do not make out a claim under the Due Process Clause. There is nothing but speculative allegations that the Deputies actions increased any risk to the decedents or that Rodger posed a known and obvious danger when the Deputies visited him on April 31, 2014. Finally there is nothing but conclusory allegations that the Deputies were deliberately indifferent; that is, that they intended to cause defendants' harm. The events that transpired in Isla Vista in May 2014 were unconscionable. Nobody could fault these Plaintiffs from seeking retribution. However, law enforcement cannot be held liable for violence caused by private parties and the law significantly restricts government liability for harm that results. Rodger's actions here were not a result of a Due Process violation by the Sheriff's Department. The Sheriff's Department requests dismissal with prejudice.

Dated: May 3, 2015

**MICHAEL C. GHIZZONI  
COUNTY COUNSEL**

By: /s/  
Lisa A. Rothstein  
Senior Deputy County Counsel  
Attorneys for Defendant  
COUNTY OF SANTA BARBARA and  
SANTA BARBARA COUNTY SHERIFF'S  
DEPARTMENT

## **DECLARATION OF SERVICE BY MAIL**

I am a citizen of the United States and a resident of Santa Barbara County. I am over the age of eighteen years and not a party to the within entitled action; my business address is 105 East Anapamu Street, Suite 201, Santa Barbara, CA.

On May 4, 2015, I served a true copy of the within **DEFENDANTS COUNTY OF SANTA BARBARA AND SANTA BARBARA COUNTY SHERIFF'S DEPARTMENT'S MOTION TO DISMISS COMPLAINT (FRCP 12(b)(6))** on the interested parties in this action by:

electronic transmission via CM/ECF to the persons indicated below:

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(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 4, 2015, at Santa Barbara, California.

/s/

Sue Collisson